REMARKS

Response to Election/Restrictions

Claims 93-95 have been cancelled without prejudice in response to the Examiner's contention that they were directed to a non-elected invention.

Response to Claim Objections and Rejections Under 35 U.S.C. 112(2).

The above amendments to the claims should obviate the objections and rejections raised by the Examiner.

Response to Claim Rejections Under 35 U.S.C. §102

Claims 1, 52-60, 65 and 67 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by Krag (U.S. Pat. No. 6,363,940). Applicants have amended the above claims to clarify the invention with respect to the '940 patent. Specifically, the rejected claims have been amended to require a first fixation element having a free end with a proximal orientation and a second fixation element having a free end with a distal orientation. The '940 patent does not teach or suggest fixation elements having proximal and distal orientations.

Claims 1, 49 and 52-61 are rejected by the Examiner as being anticipated by Gough et al. (U.S. Pat. No. 5,683,384). However, in the Gough et al. device (Figure 8) all of the antenna 16 extend distally away from the shaft. As a result, the feature of the claims wherein at least one of the fixation elements extends proximally away from the distal shaft section and at least one of the fixation elements extends distally away from the distal shaft section. Gough et al does not teach or suggest these features and therefore cannot anticipate applicants' claims directed to this feature.

Response to Double Patenting

Claims 1, 49, 52-61, 65, 67 and 92 are rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 13, 14, 18, 19, 28, 36, 38 and 42 of U.S. Patent No. 6,312,429.

Claims 1, 49, 52-61, 65 and 67-91 are rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 6, and 9-11 of U.S. Patent No. 6,540,693.

Claims 1, 49, 52-61, 65 and 67-91 are rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 9, 14, 27 and 29 of U.S. Patent No. 6,540,695.

Claims 1, 49, 52-61, 65 and 67 are rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 and 9 of U.S. Patent No. 6,638,234.

Claims 1, 49 and 52-61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 13-20 and 25 of U.S. Patent No. 6,679,851.

Claims 1, 49 and 52-61 are rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,716,179.

In response to the rejections under double patenting, applicants have concurrently herewith filed a terminal disclaimer with respect to the above referenced patents which are assigned to the present assignee.

In view of this terminal disclaimer filed herewith, applicants submit that the pending claims, as amended above, are in condition for allowance subject to the provisional rejections based on pending applications which have been assigned to the present assignee. In view of the fact that the provisional rejections are the only rejections that would remain if the above amendments to the claims and the terminal disclaimer otherwise place the application in condition for allowance, Applicants respectfully request that the Examiner withdraw the provisional rejections and allow the pending claims in the application as indicated in M.P.E.P. §822.01.

Conclusions

Applicants believe that the above pending claims define patentable subject matter. Reconsideration and an early allowance are respectfully requested.

Respectfully Submitted,

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